

REMARKS

The Office Action dated August 28, 2003, has been received and carefully noted. The following remarks are submitted as a full and complete response thereto. Claims 7-10 have been allowed.

Claims 1, 3/1 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pu (U.S. Patent No. 6,034,377) in view of Badura et al. (U.S. Patent No. 6,597,005, "Badura"). Pu and Badura, in combination, were cited for disclosing the claimed elements.

With respect to the rejections of claims 1, 3/1, and 6, the Applicants respectfully submit that Badura is not a proper reference under 35 U.S.C. § 102. The present application was filed in the U.S. Patent and Trademark Office on July 13, 2001. However, the Applicants claim priority to Japanese Patent Application No. 2000-212445 filed July 13, 2000. Therefore, the present application has an effective filing date of July 13, 2000. The Office Action of August 28, 2003, acknowledges the priority claim of the present application to the Japanese patent application. The § 102(e) effective filing date of the Badura reference is its PCT publication date of August 24, 2000. Although the Office Action appeared to indicate that the effective date of the Badura reference is the date that the PCT application was filed (February 3, 2000), patents issued directly or indirectly from international applications filed before November 29, 2000 may only be used as prior art based on the provisions of 35 U.S.C. § 102(e) in effect before November 29, 2000. Therefore, Badura is subject to the

provisions of 35 U.S.C. § 102(e) in effect before November 29, 2000. MPEP 706.02 (f) (1) and 2136.03. The 35 U.S.C. § 102(e) date of such prior art patents is the earliest of the date of compliance with 35 U.S.C. § 371(c)(1), (2) and (4), which in this case is November 20, 2001, after the priority date of the present application. As the effective date of Badura is after the effective filing date of the present application, Badura is an improper reference to cite against the present invention. As such, the Applicants respectfully request withdrawal the rejection of claims 1, 3/1 and 6.

Claims 4/3/1 and 5/1 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pu in view of Badura and further in view of Akiyama et al. (U.S. Patent No. 6,218,675, "Akiyama"). Pu, Badura, and Akiyama, in combination, were cited for disclosing the claimed elements of the invention.

As discussed above, Badura is not a proper reference to apply against the claims in this application. Accordingly, the Applicants respectfully submit that the rejection of claims 4/3/1 and 5/1 is improper as the Badura reference was cited in making the rejection of these claims. Therefore, the Applicants respectfully request withdrawal of the rejections of claims 1-6.

The Applicants wish to thank the Examiner for indicating allowable subject matter in claim 2 and allowing claims 7-10.

In that Badura is not a proper reference to apply against the claims in this application, the Applicants respectfully request withdrawal of the above-noted rejections, and the prompt issuance of a Notice of Allowability.

Should the Examiner believe anything further is desirable in order to place this application in better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

In the event this paper is not considered to be timely filed, the Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, **referencing Attorney Dkt. No. 107292-00023.**

Respectfully submitted,



Rhonda L. Barton
Registration No. 47,271
Attorney for Applicant

Customer No. 004372
ARENT FOX KINTNER PLOTKIN & KAHN, PLLC
1050 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036-5339
Tel: (202) 857-6000
Fax: (202) 638-4810

RLB/wb